

6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2015-0750; FRL- 9939-65-Region 3]

Approval and Promulgation of Air Quality Implementation Plans;
District of Columbia; Interstate Pollution Transport Requirements for the 2010 Nitrogen
Dioxide Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the District of Columbia (the District). This revision pertains to the infrastructure requirement for interstate transport pollution with respect to the 2010 nitrogen dioxide (NO₂) National Ambient Air Quality Standards (NAAQS). This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2015-0750 by one of the following methods:

- A. www.regulations.gov. Follow the on-line instructions for submitting comments.
- B. E-mail: Fernandez.cristina@epa.gov.
- C. Mail: EPA-R03-OAR-2015-0750 Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.
- D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only

accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2015-0750. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available in www.regulations.gov or may be viewed during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia Department of Energy and Environment, Air Quality Division, 1200 1st Street NE., 5th floor, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Emlyn Velez-Rosa, (215) 814-2038, or by email at velez-rosa.emlyn@epa.gov.

SUPPLEMENTARY INFORMATION: On June 6, 2014, the District Department of Energy and the Environment (DDOEE) submitted a SIP revision addressing the infrastructure requirements for the 2010 NO₂ NAAQS.

I. Background

A. General

Whenever new or revised NAAQS are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including, but not limited to, regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements.

On February 9, 2010 (75 FR 6474), EPA established a new 1-hour primary NAAQS for NO₂ at a level of 100 parts per billion (ppb), based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. *See* 40 CFR 50.11. NO₂ is a subset, and often considered an indicator, of the broader pollutant nitrogen oxides (NOx). On February 17,

2012 (77 FR 9532), EPA published its final designations for the 2010 NO₂ NAAQS, based upon 2008-2010 design values. In this rulemaking, EPA determined that no area in the country was violating the standard, designating all the areas of the country as unclassifiable/attainment. The 2008-2010 design values reflect conditions at the time throughout the country well below the 2010 NO₂ NAAQS, including the District and nearby states.

B. EPA's Infrastructure Requirements

Pursuant to section 110(a)(1), states must make infrastructure SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)." Infrastructure SIP submissions should provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements. EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Infrastructure Guidance). EPA developed this

¹ "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013. This guidance is available online at http://www.epa.gov/oar/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf.

document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions. The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2).² EPA interprets section 110(a)(1) and (2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

Additionally, EPA has provided in previous rulemaking actions a detailed discussion of the Agency's approach in reviewing infrastructure SIPs, including the Agency's longstanding interpretation of requirements for section 110(a)(1) and (2), the interpretation that the CAA allows states to make multiple SIP submissions separately addressing infrastructure SIP elements in section 110(a)(2) for a specific NAAQS, and the interpretation that EPA has the ability to act on separate elements of 110(a)(2) for a NAAQS in separate rulemaking actions.³

² On September 25, 2009, EPA issued "Guidance on SIP Elements Required Under Sections 110(a)(l) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS)," Memorandum from William T. Hartnett, Director, Air Quality Policy Division. This guidance provided that each state's SIP submission for the 2006 24-hour PM_{2.5} NAAQS must discuss whether emissions from the state significantly contribute to nonattainment of the NAAQS or interference with maintenance of the NAAQS in any other state and must address any such impact. This guidance is available online at http://www.epa.gov/ttn/caaa/t1/memoranda/20090925 harnett pm25 sip 110a12.pdf.

³ See 80 FR 2865 (January 21, 2015) (EPA's rulemaking action proposing approval of portions of the District's infrastructure SIP submissions for the 2008 ozone NAAQS and the 2010 NO₂ and sulfur dioxide (SO₂) NAAQS).

C. Interstate Pollution Transport Requirements

Section 110(a)(2)(D)(i)(I) of the CAA requires state SIPs to address any emissions activity in one state that contributes significantly to nonattainment, or interferes with maintenance, of the NAAQS in any downwind state. EPA sometimes refers to these requirements as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance), or conjointly as the "good neighbor" provision of the CAA. Specifically, section 110(a)(2)(D)(i)(I) requires the elimination of upwind state emissions that significantly contribute to nonattainment or interference with maintenance of the NAAQS in another state.

II. Summary of SIP Revisions

On June 6, 2014, the District through DDOEE submitted a revision to its SIP to satisfy the infrastructure requirements of section 110(a)(2) of the CAA for the 2010 NO₂ NAAQS, including section 110(a)(2)(D)(i)(I), pertaining to interstate transport requirements. On April 13, 2015 (80 FR 19538), EPA approved the District's infrastructure SIP submittal for the 2010 NO₂ NAAQS for all applicable elements of section 110(a)(2) with the exception of 110(a)(2)(D)(i)(I).⁴ This rulemaking action is addressing the portions of the District's infrastructure submittal for the 2010 NO₂ NAAQS that pertain to transport requirements.⁵

The District's June 6, 2014 transport submittal includes emissions inventory and air quality data that concludes that the District does not have sources that can contribute to nonattainment in, or

⁴ In this final rulemaking action, EPA also approved the District's infrastructure SIPs for the 2008 ozone and 2010 SO_2 NAAQS with the exception of the transport elements in 110(a)(2)(D)(i)(I).

⁵ For EPA's explanation of its ability to act on discrete elements of section 110(a)(2), *see* EPA's proposed rulemaking action regarding approval of portions of the District's infrastructure SIP submissions for the 2008 ozone NAAQS and the 2010 NO₂ and SO₂ NAAQS; 80 FR 2865 (January 21, 2015).

interfere with maintenance by, any other state with respect to the 2010 NO₂ NAAQS.

Currently available air quality monitoring data included in the submittal confirms that NO₂ levels continue to be well below the 2010 NO₂ NAAQS in the District and in any areas surrounding or bordering the District.⁶ Additionally, the District describes existing SIP-approved measures and other Federally-enforceable source-specific measures, pursuant to permitting requirements under the CAA, that apply to NOx sources within the District. EPA finds that the District's existing SIP provisions, as identified in the submittal, are adequate to prevent its emission sources from significantly contributing to nonattainment or interfering with maintenance in another state with respect to the 2010 NO₂ NAAQS. In light of these measures, EPA does not expect NOx emissions in the District to increase significantly, and therefore does not expect monitors in the District and nearby states, all currently measuring NO₂ concentrations well below the 2010 NO₂ NAAQS, to have difficulty continuing to attain or maintaining attainment of the NAAQS. A detailed summary of EPA's review and rationale for proposing approval of this SIP revision as meeting section 110(a)(2)(D)(i)(I) of the CAA for the 2010 NO₂ ozone NAAQS may be found in the Technical Support Document (TSD) for this rulemaking action, which is available online at www.regulations.gov, Docket number EPA-R03-OAR-2015-0750.

III. Proposed Action

EPA is proposing to approve the portions of the District's June 6, 2014 SIP revision addressing interstate transport for the 2010 NO₂ NAAQS for purposes of meeting section 110(a)(2)(D)(i)(I) requirements with respect to this NAAQS. EPA is soliciting public comments on the issues

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⁶ The District's June 6, 2014 submittal included recent air quality monitoring data for the states surrounding or bordering the District within a 50 kilometer radius, which are Maryland and Virginia. The 50 kilometers radius is the standard distance for modeling analysis in EPA's Guideline on Air Quality Models (Appendix W to 40 CFR Part 51).

discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork
 Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May

22, 2001);

is not subject to requirements of Section 12(d) of the National Technology Transfer and

Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements

would be inconsistent with the CAA; and

does not provide EPA with the discretionary authority to address, as appropriate,

disproportionate human health or environmental effects, using practicable and legally

permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, addressing the District's interstate transport requirements under

the CAA for the 2010 NO₂ NAAQS, does not have tribal implications as specified by Executive

Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in

Indian country located in the state, and EPA notes that it will not impose substantial direct costs

on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental

relations, Nitrogen dioxide.

Authority: 42 U.S.C. 7401 et seq.

Dated: November 23, 2015.

Shawn M. Garvin, Regional Administrator,

Region III.

[FR Doc. 2015-30685 Filed: 12/3/2015 8:45 am; Publication Date: 12/4/2015]

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